

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

ORION INTERNATIONAL CONSULTING)
GROUP, INC.,)
)
Plaintiff,)
v.) Case No.
)
THE ORION RECRUITING GROUP LLC,) JURY TRIAL DEMANDED
)
Defendant.)

COMPLAINT

Plaintiff, Orion International Consulting Group, Inc. ("Orion International"), for its complaint against defendant, The Orion Recruiting Group LLC ("Orion Recruiting"), alleges:

THE PARTIES

1. Orion International is a corporation organized and existing under the laws of the State of North Carolina, with a principal place of business in Raleigh, North Carolina.

2. Upon information and belief, Orion Recruiting is a Delaware Limited Liability Company, with a principal place of business in La Mesa, California.

JURISDICTION AND VENUE

3. This action arises under the Trademark Act of 1946, 15 U.S.C. §1051 et seq. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 (federal question jurisdiction) and §1338 (trademark), and 15 U.S.C. §1121 (trademark).

4. Plaintiff's claims of State Deceptive Trade Practices and Common Law Service Mark Infringement relate directly to plaintiff's substantial claims under the Lanham Act, and arise from the same nucleus of facts as plaintiff's claims under the Lanham Act. The Court has jurisdiction as to these claims under 28 U.S.C. §1338(b), as well as supplemental jurisdiction under 28 U.S.C. §1367.

5. Venue is proper in this District, pursuant to 28 U.S.C. §1391(b).

FACTS

a. Orion International's Mark and Services

6. Orion International is an employment recruiting firm, and provides services of employment hiring, recruiting, placement, staffing and career networking, arranging and conducting hiring conferences, and management and business consulting in the field of employment and hiring. It has provided these services using the service mark ORION INTERNATIONAL in interstate commerce since 1991.

7. Orion International owns United States Service Mark Registration 2,825,223 for ORION INTERNATIONAL in International Class 35 for "employment hiring, recruiting, placement, staffing and career networking services." The registration was issued March 23, 2004, and arose from Application Serial No. 78/236,384, filed April 10, 2003. Registration 2,825,223 is based on a first use date of 1991. This registration is on the Principal Register. A copy of Registration 2,825,223 is attached to this Complaint as Exhibit 1.

8. In addition to the federally registered service mark ORION INTERNATIONAL, Orion International owns the common law mark ORION INTERNATIONAL for the services described in paragraph 6.

9. Orion International has provided the services described in paragraph 6 in interstate commerce under the ORION INTERNATIONAL mark since 1991.

10. The ORION INTERNATIONAL mark has, by virtue of its use by Orion International in connection with the services described above, become known to employers and job seekers and others in the marketplace, to identify the services as those of plaintiff.

11. The mark ORION INTERNATIONAL is arbitrary or fanciful and is inherently distinctive as applied to the services described in paragraph 6 .

12. Orion International has developed extensive goodwill and reputation for the quality of its services provided under the ORION INTERNATIONAL mark.

b. Orion Recruiting's Actions

13. Upon information and belief, defendant Orion Recruiting was formed as a Delaware Limited Liability Company in June 2002.

14. Upon information and belief, Orion Recruiting is an employment recruiting and placement firm which provides services in placing candidates into the medical, health care, and information technology industries, among others. Upon information and belief,

Orion Recruiting has more than 100 recruiters nationwide and has more than 1200 open job orders nationwide at any one time.

15. Orion Recruiting provides its services under the mark ORION RECRUITING.

16. Upon information and belief, Orion Recruiting first began to provide services under the mark ORION RECRUITING in 2003.

c. **Other Relevant Facts**

17. Upon information and belief, both Orion International and Orion Recruiting provide their services in the same channels of trade, and each services both employers and job seekers, throughout the United States.

18. The dominant portion of both the ORION INTERNATIONAL and the ORION RECRUITING marks is the word "Orion."

19. The mark ORION RECRUITING, when used in conjunction with recruiting and job placement services, is confusingly similar to ORION INTERNATIONAL so that consumers of the services are likely to be confused and mistaken as to whether the services originate from a single source, and deceived as to the source of the services.

FIRST CAUSE OF ACTION
(Service Mark Infringement: 15 U.S.C. §1114)

20. Orion International repeats and realleges the allegations in paragraphs 1 through 19.

21. By its aforesaid conduct and use of ORION RECRUITING in commerce, defendant Orion Recruiting has unlawfully infringed upon the rights protected by Orion International's registered mark in violation of 15 U.S.C. §1115(a).

22. Defendant has refused to cease and desist from its unlawful conduct, despite demand.

23. Upon information and belief, defendant's infringement has been willful, making this an exceptional case.

24. As a result of defendant's infringing conduct, plaintiff has suffered damages, and will suffer immediate and irreparable injury unless defendant is enjoined from its unlawful activities; therefore, plaintiff is without an adequate remedy at law.

SECOND CAUSE OF ACTION
**(Unfair Competition, Infringement of Common Law
Service Mark, False Designation of Origin,
Sponsorship or Approval: 15 U.S.C. §1125(a))**

25. Orion International repeats and realleges the allegations in paragraphs 1 through 24.

26. The mark "ORION INTERNATIONAL" has become uniquely associated with plaintiff and is inherently distinctive in the recruiting and job placement marketplace.

27. Defendant's use in commerce of ORION and ORION RECRUITING has, on information and belief, caused and is likely to cause confusion, mistake and deception as to the affiliation, connection or association of the defendant with the plaintiff.

28. Defendant's use of a mark confusingly similar to plaintiff's ORION INTERNATIONAL, has, on information and belief, caused actual confusion and is likely to cause confusion, mistake and deception as to the origin of defendant's services and as to the sponsorship or approval of defendant's activities by the plaintiff.

29. The acts and conduct of defendant are in violation of 15 U.S.C. §1125(a)(1).

30. Defendant has refused to cease and desist from its unlawful acts, despite demand.

31. Upon information and belief, defendant's unlawful actions have been willful, making this an exceptional case.

32. As a result of defendant's unlawful conduct, plaintiff has suffered damages, and will suffer immediate and irreparable injury unless defendant is enjoined from its unlawful activities; therefore, plaintiff is without an adequate remedy at law.

THIRD CAUSE OF ACTION
(State Deceptive Trade Practices:
6 Del.C. §2532)

33. Orion International repeats and realleges the allegations in paragraphs 1 through 32.

34. Defendant has engaged in deceptive trade practices, in violation of 6 Del.C. §2532 (2, 3), in that it has (a) caused a likelihood of confusion or misunderstanding as to the

source, sponsorship, approval, or certification of its services and/or (b) caused a likelihood of confusion or misunderstanding as to affiliation, connection, or association with, or certification by, plaintiff.

35. Upon information and belief, defendant has willfully engaged in the deceptive trade practices described in the preceding paragraphs, making this an exceptional case.

36. As a result of defendant's unlawful deceptive trade practices, plaintiff has suffered damages, and will suffer immediate and irreparable injury unless defendant is enjoined from its unlawful activities; therefore, plaintiff is without an adequate remedy at law.

FOURTH CAUSE OF ACTION
(Common Law Service Mark Infringement)

37. Orion International repeats and realleges the allegations in paragraphs 1 through 36.

38. Defendant's use of ORION RECRUITING in commerce constitutes common law service mark infringement.

39. Upon information and belief, defendant's unlawful actions have been willful, making this an exceptional case.

40. As a result of defendant's unlawful conduct, plaintiff has suffered damages, and will suffer immediate and irreparable injury unless defendant is enjoined from its unlawful activities; therefore, plaintiff is without an adequate remedy at law.

WHEREFORE, Orion International prays that the Court issue an order granting plaintiff relief as follows:

1. Issuing a preliminary and permanent injunction enjoining Defendant, its officers, agents, servants, employees, employees and attorneys, and all those in active concert or participation with them, from:
 - a. infringing plaintiff's ORION INTERNATIONAL service mark and from using any name or mark that is confusingly similar to ORION INTERNATIONAL; and
 - b. doing any other act or thing likely to induce the belief that defendant's services are in any way connected with plaintiff's business or services, or are sponsored or approved by or affiliated with plaintiff's business or services.
2. Ordering an award of damages in an amount to be determined at trial;
3. Ordering an award of damages, profits, and treble damages as provided in 15 U.S.C. §1117 and state statutes for willfulness;
4. Ordering an award of attorneys' fees, together with the costs of this action as provided in 15 U.S.C. §1117(a), and state statutes;
5. Ordering destruction of all advertising, letterhead and all other articles bearing the infringing marks, as provided in 15 U.S.C. §1118.
6. Ordering defendant to file with this Court and serve on plaintiff's counsel within thirty (30) days after the entry of an injunction issued by this Court, a sworn written

statement setting forth how defendant has complied with the injunction and the Court's Order;
and

7. Ordering such other and further relief as the Court deems proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues in this case.

Of Counsel:

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Attorneys for Plaintiff Orion International
Consulting Group Inc.

Dated: May 8, 2006

EXHIBIT 1



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Typed Drawing

Word Mark	ORION INTERNATIONAL
Goods and Services	IC 035. US 100 101 102. G & S: Employment hiring, recruiting, placement, staffing and career networking services. FIRST USE: 19910000. FIRST USE IN COMMERCE: 19910000
Mark Drawing Code	(1) TYPED DRAWING
Design Search Code	
Serial Number	78236384
Filing Date	April 10, 2003
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	December 30, 2003
Registration Number	2825223
Registration Date	March 23, 2004
Owner	(REGISTRANT) Tully, James R INDIVIDUAL UNITED STATES Orion International 143 4th Avenue N Franklin TENNESSEE 37064
	(LAST LISTED OWNER) ORION INTERNATIONAL CONSULTING GROUP, INC. CORPORATION NORTH CAROLINA 5511 CAPITAL CENTER DRIVE SUITE 216 RALEIGH NORTH CAROLINA 27606
Assignment Recorded	ASSIGNMENT RECORDED
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "INTERNATIONAL" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK

Register PRINCIPAL.
Live/Dead LIVE
Indicator

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CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ORION INTERNATIONAL CONSULTING GROUP, INC.

(b) County of Residence of First Listed Plaintiff Wake County, North Carolina
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Frederick L. Cottrell, III

Jeffrey L. Moyer

Anne Shea Gaza

Richards, Layton & Finger

One Rodney Square

920 North King Street

Wilmington, DE 19801

302-651-7700

DEFENDANTS

THE ORION RECRUITING GROUP LLC

County of Residence of First Listed Defendant New Castle County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

 1 U.S. Government Plaintiff 3 Federal Question
(U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only) PTF DEF PTF DEF
Citizen of This State 1 1 Incorporated or Principal Place of Business In This State 4 4Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	PERSONAL INJURY		
120 Marine	310 Airplane	362 Personal Injury - Med Malpractice	412 Appeal	400 State Reappointment
130 Miller Act	315 Airplane Product Liability	365 Personal Injury - Product Liability	420 Other Food & Drug	410 Antitrust
140 Negotiable Instrument	320 Assault Libel & Slander	368 Asbestos Personal Injury Product Liability	423 Drug Related Seizure of Property 21 USC 881	430 Banks and Banking
150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability		430 Liquor Laws	450 Commerce
151 Medicare Act	340 Marine	370 Other Fraud	440 R.R. & Truck	460 Deportation
152 Recovery of Defaulted Student Loans (excl. Veterans)	345 Marine Product Liability	371 Truth In Lending	450 Airline Regs	470 Racketeer Influenced and Corrupt Organizations
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	380 Other Personal Property Damage	460 Occupational Safety/Health	480 Consumer Credit
160 Stockholder's Suits	355 Motor Vehicle Product Liability	385 Property Damage Product Liability	470 Other	490 Cable/Sat TV
190 Other Contract	360 Other Personal Injury		500 LABOR	510 Selective Service
195 Contract Product Liability		PRISONER PETITIONS	710 Fair Labor Standards Act	550 Securities/Commodities Exchange
196 Franchise		510 Motions to Vacate Sentence Habeas Corpus	720 Labor Mgmt Relations	575 Customer Challenge
REAL PROPERTY	CIVIL RIGHTS	530 General	730 Labor Mgmt Reporting & Disclosure Act	590 Other Statutory Actions
210 Land Condemnation	441 Voting	535 Death Penalty	740 Railway Labor Act	610 Agricultural Acts
220 Foreclosure	442 Employment	540 Mandamus & Other	790 Other Labor Litigation	620 Economic Stabilization Act
230 Rent Lease & Eject	443 Housing Accommodations	550 Civil Rights	791 Empl. Ret. Inc. Security Act	630 Environmental Matters
240 Torts to Land	444 Welfare	555 Prison Condition		640 Energy Allocation Act
245 Tert Product Liability	445 Amer. w/ Disabilities - Employment			650 Freedom of Information Act
290 All Other Real Property	446 Amer. w/ Disabilities - Other			660 Appeal of Fee Determination Under Equal Access to Justice
	440 Other Civil Rights			670 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (Specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Justice
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §1051

Brief description of cause: Service mark infringement, false designation.

VI. CAUSE OF ACTION	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23		DEMAND'S	CHECK YES only if demanded in complaint:
			Injunction, Damages	JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

VII. REQUESTED IN COMPLAINT			DOCKET NUMBER
VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE		

DATE May 8, 2006

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY	AMOUNT	APPLYING ICP	JUDGE	MAG. JUDGE
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RECEIPT # _____ AMOUNT _____ APPLYING ICP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved)

(c) Attorneys. Enter firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)"

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8 (a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below

United States plaintiff (1) Jurisdiction is based on 28 U.S.C. 1335 and 1338. Suits by agencies and officers of the United States are included here

United States defendant (2) When the plaintiff is suing the United States, its officers or agencies, place an X in this box

Federal question (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked

Diversity of citizenship (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party

IV. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive

VI. Origin. Place an "X" in one of the seven boxes

Original Proceedings (1) Cases which originate in the United States district courts

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C. Section 1441. When the petition for removal is granted, check this box

Remanded from Appellate Court (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date

Reinstated or Reopened (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date

Transferred from Another District (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers

Multidistrict Litigation (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above

Appeal to District Judge from Magistrate Judgment (7) Check this box for an appeal from a magistrate's decision

VII. Requested in Complaint. Class Action Place an "X" in this box if you are filing a class action under Rule 23, F.R.C.P.

Demand In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction

Jury Demand Check the appropriate box to indicate whether or not a jury is being demanded

VIII. Related Cases. This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases

Date and Attorney Signature. Date and sign the civil cover sheet

(rev. 07/89)